Supreme Court, U.S.
FILED
MAY 20 2006
OFFICE OF THE CLERK

No. 06-92

IN THE

# Supreme Court of the United States

DAVID EUGENE EDWARDS AND
JAMES EUGENE EDWARDS,

*Petitioners,*

v.

SECURITIES AND EXCHANGE COMMISSION,

*Respondents.*

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## PETITION FOR WRIT OF CERTIORARI

David Eugene Edwards
*Pro se*
V68885
Bldg. 1; #108
CSP Solano
P.O. Box 4000
Vacaville, CA 95696

James Eugene Edwards
*Pro se*
V68959
Bldg. 1; #108
CSP Solano
P.O. Box 4000
Vacaville, CA 95696

## QUESTION PRESENTED

Whether a violation of a right secured by the Constitution deprives the court of subject matter jurisdiction.

## PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1(b), the following list identifies all of the parties appearing here and before the United States Court of Appeals for the Fifth Circuit.

The Petitioners here and the Appellants below are David Eugene Edwards and James Eugene Edwards. Joined by the United States Court of Appeals for the Fifth Circuit to the case below as an Appellant was Gerald Stock.

The Respondents here and the Appellees in the Court of Appeals for the Fifth Circuit are the Securities and Exchange Commission represented below by Kevin D. Solonsky, Giovanni P. Prezioso, Richard M. Humes and Samuel M. Forstein.

Plaintiff in the United States District Court, Northern Texas was the Securities and Exchange Commission represented by Jeffrey Norris. Receiver is Lawrence J. Warfield and his attorneys are Kelly Crawford, Scheef and Stone and Patrick Murphy, Gutilla and Murphy. Other defendants beside Petitioners were Resource Development International, LLC, Jade Asset Management, Ltd., Sound Financial Services, Inc., Intercoastal Group, LLC, Intercoastal Group II, LLC, Kevin Lynds, Gerald Stock, Blackwolf Holdings, LLC and William Whelan.

## TABLE OF CONTENTS

Page

Questions Presented ..... i

Parties to the Proceeding ..... ii

Table of Contents ..... iii

Table of Authorities ..... v

Opinions Below ..... 1

Jurisdiction ..... 1

Constitutional Provisions ..... 1

Statement of the Case ..... 2

Factual Background ..... 3

Reasons for Granting Petition ..... 8

Conclusion ..... 17

APPENDIX

Opinion of the United States Court of appeals for the Fifth Circuit ..... App. 1

Final Judgement of the United States District Court for the Northern District of Texas, Dallas Division ..... App. 10

Order Denying Petition for Rehearing ..... App. 28

Petitioners' Responses by Special Visitation with Affidavits in Civil Action No. 3:02-CV-0605..... App. 30

## TABLE OF AUTHORITIES

**CASES** **PAGES**

*Boyd v. United States,*
116 U. S. 616, 6 Sup. Ct. 524, 29 L. Ed. 746..... 15

*Gaar v. Quirk,*
86 F.3d 451, 453 (5th Cir. 1996)..... 8

*Gouled v. United States,*
255 U.S. 298, 303, 304 (1921)..... 15

*Haines v. Kerner,*
404 U.S. 519..... 14

*Lambert v. People of the State of California,*
355 U.S. 225, 228, 78 S.Ct. 240, 243 (1957)..... 10

*Omni Capital, Int. V. Rudolph Wolff and Company,*
484 US 97, 104; 108 S.Ct. 404, 409;
98 L.Ed.2d 415 (1987)..... 11

*SEC v. Bilzerian,*
378 F.3d 1000, 1103, (DC 2004)..... 6, 9

*SEC v. Vision Communication Inc.,*
74 F.3d 287, 291 (C,.A.D.C. 1996)..... 10, 11

*Silverthorne Lumber Co. v. United States,*
251 U. S. 385, 40 Sup. Ct. 182, 64 L. Ed. 319..... 15

*Weeks v. United States,*
232 U. S. 383, 34 Sup. Ct. 341, 58 L. Ed. 652,
L. R. A. 1915B, 834, Ann Cas. 1915C, 117..... 15

**STATUTES AND RULES**

15 U.S.C. § 78aa..... 10, 12

18 U.S.C. § 241..... 8, 12

18 U.S.C. § 242..... 8, 12

18 U.S.C. § 2071..... 5

28 U.S.C. § 754..... 6, 9, 10, 11, 12, 16

28 U.S.C. § 1254(1)..... 1

28 U.S.C. § 1692..... 6, 9, 12

Federal Rules of Civil Procedure, Rule 4k(1)..... 10

Federal Rules of Civil Procedure, Rule 4(k)(1)(D)..... 7, 10

Federal Rules of Civil Procedure, Rule 12(a)(1)(A)..... 14

Federal Rules of Civil Procedure, Rule 12(h)(3)..... 8

Federal Rules of Civil Procedure, Rule 65(b)..... 5

**UNITED STATES CONSTITUTION**

Fourth Amendment..... 1, 12, 13, 14, 16

Fifth Amendment..... 2, 12, 13, 14, 16

## OPINIONS BELOW

The opinion of the Court of Appeals for the Fifth Circuit was unpublished, and is reprinted in the Appendix to the Petition (App. 1). The District Court's judgment is reprinted in the Appendix to the Petition (App. 10).

## JURISDICTION

The Court of Appeals entered its judgment on December 21, 2005. A Petition for Rehearing was denied on February 22, 2006 (App. 28). This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States provides "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment to the Constitution of the United States provides in relevant part "No person shall... be deprived of life, liberty or property, without due process of law;"

## STATEMENT OF THE CASE

This case is important to the upholding of the entire judicial process of the United States and the protection of the citizens of this country from abuse of power under the color of law. Congress enacts laws and rules for the purpose of maintaining justice and freedom for all. It is the responsibility of the Judiciary to carry out those laws and rules and to guarantee all judges, officers of the court and those employed by the courts are upholding not only the laws and the rules established by Congress but those basic civil rights guaranteed by the Constitution of the United States.

Due to the ever present threat of terrorist attacks by those outside our country and the United States government's challenge to protect our citizens there is much controversy today about the process and procedures of those responsible for

this protection. The privacy of American citizens and each person's right to be secure in their houses, papers and effects as well as maintaining a standard of due process must be upheld. A lesser publicized threat, however becoming more well known, is the abuse of power from governmental agencies, law enforcement and others given the duty to uphold the laws, the rules and the very foundation of our great country – the Constitution. Under the color of law many feel the end justifies the means ignoring all the rules. This Court must uphold the Constitution and the laws of our land through the oversight of those appointed or hired for the task of enforcing said laws to be sure they are following proper procedure avoiding violations of basic civil rights.

**Factual Background**

On March 25, 2002 the Securities and Exchange Commission (SEC) filed a civil complaint in the United States District Court, Northern Texas (USDC NT) against David

Eugene Edwards and James Eugene Edwards, Petitioners herein, and others. Within a couple of hours of the filing of the complaint and prior to registration in the Western District of Washington and personal service on any defendants, Lawrence J. Warfield and others with the assistance of the United States Marshal Service and local law enforcement forced entry into the private office and homes of Petitioners in Washington State. Occupants at the locations demanded the production of a search warrant and were given a copy of a Temporary Restraining Order (TRO) **(CR 9)**[1] and an Order Appointing Temporary Receiver (OATR) **(CR 8)** filed that same day in USDC NT. An employee of the Petitioners who was at the office at the time of the forced entry, absent search warrant, was detained, questioned and upon demanding two separate times was denied the right to contact legal counsel.

---

[1] **CR** - Court record of Case No. 3:02-CV-0605 in the United States District Court, Northern Texas.

The TRO presented to citizens in the Western District of Washington stated "adjudication of the Motion for Preliminary Hearing shall take place at the United States Courthouse, 1100 Commerce, Dallas, Texas on the 25 day of March, 2002 at 21:10 o'clock p.m." Later this document, filed in the court record and known as docket #9 in the USDC NT Case N0. 3:02-CV-0605, was altered by an unknown person using white out in violation of 18 US.C. § 2071. The date for adjudication of the preliminary hearing was changed to April 11, 2002 at 10:00 a.m., outside the statutory requirement of ten (10) days pursuant to Federal Rules of Civil Procedure, Rule 65(b).

Page 3, ¶ 4 of the OATR states – "The Receiver is authorized, without breaching the peace...". Mr. Warfield did not have permission to enter the premises of the office and homes of Petitioners however the U.S. Marshals accompanying Warfield instructed occupants they must let him and the others enter. A search ensued of all premises and property was seized

absent a search warrant, absent registration in the Western District of Washington and absent personal service of civil action on defendants.

On March 27, 2002 the Receiver did file the necessary paperwork in the Western District of Washington pursuant to 28 U.S.C. § 754 however this being two days after he had already seized property. "To invoke § 1692 a receiver **first** must comply with 28 U.S.C. § 754... § 754 is a 'stepping stone' on [the court's] way to exercising in personam jurisdiction over one who holds receivership assets in a remote district." *SEC v. Bilzerian*, 378 F3d 1100, 1103, (DC 2004). (Bold emphasis added.)

Beginning on March 26, 2002 through March 28, 2002 defendants named in the SEC's civil complaint were served **(CR 22 and 28)**. "Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant when authorized by a statute of the United States."

Federal Rules of Civil Procedure, Rule 4(k)(1)(D).

On April 13, 2002 Petitioners placed their answers by "special visitation" to the civil complaint in the United States Postal Service with postage attached. The answers were timely and attached affidavits did specifically deny all averments. Petitioners questioned the subject matter and personam jurisdiction of the court in Texas from this very first instance and demanded jurisdiction be addressed before proceeding. The clerk of the court of the USDC NT docketed Petitioners' answers on April 18, 2002 **(CR 69 and 70)**.

On April 19, 2002 Plaintiff, SEC, filed an application/request for clerk's entry of default stating Petitioners "have not filed an Answer to the Commission's Complaint" **(CR 73)** and a motion for default judgment against Petitioners **(CR 74)**. On May 7, 2002 an order issued granting interlocutory judgment against Petitioners **(CR 105)**. On May 8, 2002 a hearing was held in the USDC NT court and

Petitioners' answers were stricken from the record.

On November 10, 2004 final judgment granting permanent injunction and other relief issued against Petitioners. On January 10, 2005 Petitioners noticed the appeal to the Court of Appeals for the Fifth Circuit. On December 21, 2005 The Fifth Circuit affirmed the judgment. Petitioners timely filed a petition for rehearing which was denied on February 22, 2006.

**REASONS FOR GRANTING THE PETITION**

A question of subject matter jurisdiction can be raised at any stage in the judicial process. Federal Rules of Civil Procedure 12(h)(3); *Gaar v. Quirk*, 86 F.3d 451, 453 (5th Cir. 1996). It was not until April of this year, Petitioners discovered the acts of the Receiver on March 25, 2002 were criminal pursuant to 18 U.S.C. §§ 241 and 242. The Receiver, Lawrence J. Warfield and others entered the private office and homes of the Petitioner searching for and seizing property without legal authority – a search warrant. The Receiver had only the authority bestowed upon him under the orders of the USDC NT

court, the United States Code and the Federal Rules of Civil Procedure. However if the court was void of jurisdiction then so was the Receiver. These criminal acts took place:

**Within two hours** of this court's Order Appointing Temporary Receiver stating "without breaching the peace."[6]

**Two days prior** to complying with Receiver's duty[7] to file a copy of Complaint and his Order Appointing Temporary Receiver (OATR) in the district where the property is located (Western Washington District) in order to invoke authority[8] necessary to execute process in a different district.

---

[6] Order Appointing Temporary Receiver, Page 3, ¶ 4.

[7] 28 U.S.C. § 754.

[8] 18 U.S.C. § 1692. "To invoke § 1692 a receiver **first** must comply with 28 U.S.C. § 754... § 754 is a 'stepping stone' on [the court's] way to exercising in personam jurisdiction over one who holds receivership assets in a remote district." *SEC v. Bilzerian*, 378 F3d 1100, 1103, (DC 2004). (Bold emphasis added.)

**Three days prior** to service of summons on Defendants, a necessary element of notice[9] to establish personal jurisdiction[10] in a different district authorized by a statute of the United States[11] and prior to the court placing the assets of Defendants into receivership.[12]

In this case, the district court had **no** source of personal jurisdiction at the time the Receiver finally complied with 28 U.S.C. § 754; two days **after** he took possession of the receivership assets. However, since the court did not enjoy

---

[9] "E[I]ngrained in our concept of due process is the requirement of notice. Notice is sometimes essential so that the citizen has the chance to defend charges. Notice is required before property interests are disturbed,..." *Lambert v. People of the State of California*, (1957) 355 U.S. 225, 228, 78 S.Ct. 240, 243.

[10] Federal Rules of Civil Procedure, Rule 4k(1).

[11] Federal Rules of Civil Procedure, Rule 4k(1)(D); 15 U.S.C. §78aa.

[12] "...that power exists precisely because the court has taken control over the property placed in receivership." *SEC v. Vision Communication Inc.*, 74 F.3d 287, 291 (C.A.D.C. 1996)

personal jurisdiction, the late filing cannot establish jurisdiction in the first instance and certainly not retroactively. At the time the district court entered its order authorizing the Receiver to "enter the premises" the Receiver's actions and late filing of paperwork in compliance with § 754 have already deprived the court of any jurisdiction it could have enjoyed by service of summons and initiation of the action.[13] A Receiver enjoys only such jurisdiction the district court possesses. In this case, the Northern Texas district court had no jurisdiction on March 25, 2002 and therefore certainly none to extend into the Western District of Washington.

The Receiver's actions in Washington state prior to citizens being joined as defendants to the civil case and the unlawful search and seizure violated the Petitioners' rights

---

[13] "In nondiversity cases, the requirement that a court have personal jurisdiction stems from the Due Process Clause." Citing *Omni Capital, Int. v. Rudolph Wolff and Company*, 484 US 97, 104, 108 S.Ct. 404, 409 98 L.Ed.2d 415 (1987) *Vision Communications, Inc.* at 289.

under the Fourth and Fifth Amendments to the United States Constitution and as such are violations of federal criminal law.

18 U.S.C. 241 Conspiracy against rights – Lawrence J. Warfield and others known and unknown disguised as officers and agents of the United States did go on the premises of Petitioners with intent to prevent and hinder Petitioners' right to be secure in their Persons, houses, papers and effects against unreasonable search and seizure and to enjoy due process of law by notice of the civil action; and

18 U.S.C. 242 deprivation of rights under color of law Lawrence J. Warfield and others known and unknown under color of law, e.g. 28 U.S.C. §§ 754, 1692 and 15 U.S.C. § 78aa in the state of Washington did subject Petitioners to the deprivation of rights, privileges and immunities secured and protected by the Constitution and the laws of the United States.

The Fifth Circuit erred in not reviewing the due process challenges raised by Petitioners stating "Appellants also raise a number of due process arguments on appeal. Their arguments

are not addressed, however, because Appellants waived their due process arguments by failing to raise them below." The Fifth Circuit arrived at this conclusion due to their failure to recognize Petitioners' answers (Reprinted in the Appendix at App. 30) were filed timely therefore ignoring the substance of the answers where Petitioners did first raise the Constitutional violations of the Fourth (search and seizure) and Fifth Amendments (due process). In many documents during the course of the proceedings due process violations were raised over and over again. These violations should be reviewed by this court.

The Fifth Circuit ruling that Petitioners' answers were not timely is an error. Petitioners did place with the United States Postal Service with proper postage on April 13, 2002 in Tacoma, Washington (See specifically Appellants' Answers, Certificates of Service, App. 37-38 and App. 54-55). This is the **seventeenth** day after date of service (March 27, 2002 as per

Fifth Circuit Opinion) for Petitioner, James Edwards, and the **sixteenth** day after date of service (March 28, 2002 as per Fifth Circuit Opinion) for Petitioner, David Edwards. The mailing of Appellants answers on April 13, 2002 is clearly within the time limit proscribed in Rule 12(a)(1)(A) of twenty days.

The USDC NT denied the Petitioners the right to be heard through fraud. Petitioners, appearing *pro se*, reminded the lower court of this Court's ruling in *Haines v. Kerner*, 404 U.S. 519 to look to the substance rather than the form of the pleadings of those unschooled in law. The Plaintiff, Securities and Exchange Commission (SEC), lied to the USDC NT court in their application for default when they stated Petitioners did not file an answer at all. However on appeal the SEC recognized Petitioners did file a pleading but attacked its form.

The rights guaranteed to the Petitioners by the Fourth and Fifth Amendments to the Constitution have been violated through unlawful search and seizure and a total lack of due

process.

> "It would not be possible to add to the emphasis with which the framers of our Constitution and this court (in Boyd v. United States, 116 U. S. 616, 6 Sup. Ct. 524, 29 L. Ed. 746, in Weeks v. United States, 232 U. S. 383, 34 Sup. Ct. 341, 58 L. Ed. 652, L. R. A. 1915B, 834, Ann Cas. 1915C, 1177, and in Silverthorne Lumber Co. v. United States, 251 U. S. 385, 40 Sup. Ct. 182, 64 L. Ed. 319) have declared the importance to political liberty and to the welfare of our country of the due observance of the rights guaranteed under the Constitution by these two amendments. The effect of the decisions cited is: That such rights are declared to be indispensable to the 'full enjoyment of personal security, personal liberty and private property'; that they are to be regarded as of the very essence of constitutional liberty; and that the guaranty of them is as important and as imperative as are the guaranties of the other fundamental rights of the individual citizen — the right to trial by jury, to the writ of habeas corpus, and to due process of law. It has been repeatedly decided that these amendments should receive a liberal construction, so as to prevent stealthy encroachment upon or 'gradual depreciation' of the rights secured by them, by imperceptible practice of courts or by well-intentioned, but mistakenly overzealous, executive officers. *Gouled v. United States*, 255 U.S. 298, 303, 304 (1921).

The Receiver could have obtained a search warrant in Washington state or waited until he had filed the necessary documents pursuant to 28 U.S.C. § 754 and the Petitioners had been served summons and complaint.

The very basic Constitutional rights of all American citizens are at stake when without legal authority and prior to notice of a court action a Receiver can force entry into the private office and homes in order to search and seize whatever items he wishes. Petitioners and all Americans must be able to rely on the Constitution to protect them from our own governmental agencies, law enforcement and officers of the court. Violations of basic Constitutional rights guaranteed by the Fourth and Fifth Amendments should divest the court of subject matter jurisdiction and thus void the judgment.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Dated: May 19, 2006

Respectfully submitted,

David Eugene Edwards,
Petitioner,
Appearing *pro se*
V68885
Bldg. 1; #108
CSP Solano
P.O. Box 4000
Vacaville, CA 95696

James Eugene Edwards,
Petitioner,
Appearing *pro se*
V68959
Bldg. 1; #108
CSP Solano
P.O. Box 4000
Vacaville, CA 95696

App. 1

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

---

05-10070
Summary Calendar

---

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

v.

RESOURCE DEVELOPMENT INTERNATIONAL LLC; ET AL.,

Defendants,

DAVID EDWARDS; JAMES EDWARDS, GERALD J. STOCK,

Defendants-Appellants.

---

Appeals from the United States District Court
for the Northern District of Texas
02-cv-605

---

Before HIGGINBOTHAM, BENAVIDES, and DENNIS, Circuit Judges.

PER CURIAM:*

Defendants-Appellants challenge the district court's denial of their motion to vacate its final judgment against Appellants. For the reasons that follow, we affirm the final judgment.

## I. Background

On March 25, 2002, the Securities and Exchange Commission ("SEC") filed a complaint against eleven defendants and four relief defendants in the United States District Court for the Northern District of Texas. Three of the defendants have appealed the final judgment in the case: James Edwards ("J. Edwards"), David Edwards ("D. Edwards"), and Gerald J. Stock ("Stock") (collectively the "Appellants"). The

---

* Pursuant to 5th CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th CIR. R. 47.5.4.

complaint alleged that Appellants violated the registration and anti-fraud provisions of the federal securities laws by engaging in a scheme to defraud investors of almost $100 million. In addition to the complaint, the SEC filed: (1) an Application for Appointment of Receiver, (2) and application for Issuance of Preliminary Injunction and *Ex Parte* Temporary Restraining Order and orders freezing assets, requiring an accounting, requiring preservation of documents, repatriation of assets, surrender of passports, and authorizing expedited discovery (the "TRO Application"), (3) a memorandum and exhibits in support of these applications, and (4) a Certificate under FED. R. CIV. P. 65(b).

The district court, on March 25, 2002, granted both SEC applications and appointed a temporary receiver ("Receiver") (1) to take control of Appellants' assets, (2) to require Appellants to deliver their assets to the Receiver, and (3) to enjoin Appellants from (a) disturbing these assets, (b) interfering with the operations of the Receiver, or (c) filing a

bankruptcy action. In addition, the clerk issued summonses for the SEC to serve on Appellants. J. Edwards and Stock were served on March 27, 2002, and D. Edwards on March 28, 2002.

On March 27, 2002, the district court issued an amended TRO ordering Appellants to produce an accounting within ten days. A hearing was held on April 11, 2002, at which time the court issued a Preliminary Injunction Order (the "Injunction"). Among other things, the Injunction required Appellants to produce an accounting within seventy-two hours.

On April 18, 2002, D. Edwards and J. Edwards filed a document captioned "Response by Special Visitation," and Stock filed an identically captioned document on April 24, 2002. On May 7, 2002, the court granted the SEC's motion for an interlocutory default judgment against Appellants permanently barring them from violating the federal securities laws.

On March 26, 2002, J. Edwards withdrew $28,900 from his bank account. On March 29, 2002, D. Edwards removed

business records and had a locksmith change the locks on his office, which had been seized by the Receiver. J. Edwards and D. Edwards were served with an order requiring their presence at a May 8, 2002, hearing. Neither Appellant attended. The district court held both Appellants in civil contempt, and struck their respective "Response by Special Visitation" filings because their actions violated the court's orders. Stock filed a petition for bankruptcy in the United States Bankruptcy court for the Eastern District of Wisconsin on May 24, 2002. He was served with an order requiring his presence at a July 22, 2002, hearing. Stock did not attend. The court also held Stock in civil contempt for failing to attend the hearing and for instituting a bankruptcy action in violation of the court's orders and struck Stock's "Response by Special Visitation."

On October 1, 2002, the court denied the Edwards' motion to vacate the interlocutory judgment. On November 10, 2004, the court issued a final judgment against the Appellants. On January 10, 2005, Appellants filed notices of appeal. Two

days later, the district court denied the Edwards' motion to vacate final judgment.

## II. Discussion

We review *de novo* a challenge to the subject matter jurisdiction of the district court. *Robinson v. TCI/US West Communc'ns Inc.*, 117 F.3d900, 904 (5th Cir. 1997). A question about subject matter jurisdiction may be presented at any time by any party. FED. R. Civ. P 12(h)(3); *Gaar v. Quirk*, 86 F.3d 451, 453 (5th Cir. 1996).

Appellants raise three subject matter jurisdiction arguments in their appeal. Their attempts to characterize certain due process arguments as subject matter jurisdiction arguments fail. First, J. Edwards and D. Edwards assert that the "United States District Courts" are unconstitutional as only the "district courts of the United States" are valid. They argue that Congress replaced Article III district courts with the United States District Courts through its Act of June 25, 1948, Pub. L. 773, 62 Stat. 869 ("the Act"). Claiming Congress created new,

unconstitutional courts, J. Edwards and D. Edwards contend the district court lacked jurisdiction. Not only does it use the two terms interchangeably, the Act, in section 2(b), emphasizes that the courts therein referenced "shall be construed as continuations of existing law." The Supreme Court, in reference to the Act, has stated that "no changes of law or policy are to be presumed from changes of language in the revision unless an intent to make such changes is clearly expressed." *Fourco Glass Co. V. Transmirra Prods. Corp.*, 353 U.S. 222, 227 (1957) (discussing the Act). Moreover, we addressed this exact argument in *Warfield v. Byron* and "decline[d] to invalidate much of the last sixty years of securities litigation because the 'D's' and 'C's' are capitalized differently in different statues." 137 Fed. Appx. 651, 654 (5th Cir. 2005) (unpublished). Therefore, the argument is rejected.

Second, Appellants claim the SEC should have held an administrative hearing before filing the action against them in federal district court. Appellants argue that the failure to do so

meant the SEC lacked standing to bring the action and the district court accordingly lacked jurisdiction. We disagree. The SEC brought the action under the Securities Act of 1933 and the Securities Exchange Act of 1934, which both entitle the SEC to bring actions against securities defendants in the first instance in federal district court. 15 U.S.C. §§ 77t(b), 78u(d)(1) (2000).

Third, Stock argues he was charged with violating a regulation that was never published in the Federal Register, and therefore the charge was invalid and the court lacked jurisdiction. Stock was charged with violating 17 C.F.R. § 240.10b-5, which was published in the Federal Register. Consequently, Stock's argument fails.

Appellants also raise a number of due process arguments on appeal. Their arguments are not addressed, however, because Appellants waived their due process arguments by failing to raise them below. "Failure to raise a due process objection before a district court waives that objection on appeal." *Newby v. Enron Corp.*, 394 F.3d 296,

309 (5th Cir. 2004). Not only did they fail to raise a due process argument below, Appellants failed to file an answer to the complaint or a motion to dismiss. Appellants filed document entitled "response[s] by special visitation" after the twenty-day period allotted for serving answers by Federal rule of Civil Procedure 12(a). Moreover, this document was stricken by the district judge. In sum, having waived any due process arguments, Appellants have not preserved them for appeal.

## V. CONCLUSION

Appellants raise three subject matter jurisdiction arguments on appeal. Each argument fails. Appellants also waived their due process arguments. For the foregoing reason, we AFFIRM the final judgment.

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

DALLAS DIVISION

| | | |
|---|---|---|
| SECURITIES AND EXCHANGE COMMISSION | ) | |
| Plaintiff, | ) | |
| vs. | ) | Civil Action No. 03:02-CV-0605-R |
| RESOURCE DEVELOPMENT INTERNATIONAL, LLC, DAVID EDWARDS, JAMES EDWARDS, JADE ASSET MANAGEMENT, LTD., SOUND FINANCIAL SERVICES, INC., INTERCOASTAL GROUP, LLC INTERCOASTAL GROUP II, LLC, KEVIN LYNDS, GERALD J. STOCK, BLACKWOLF HOLDINGS, LLC, And WILLIAM WHELAN, | ) | |
| Defendants, | ) | |
| and | ) | |
| PACIFIC INTERNATIONAL LIMITED PARTNERSHIP, INTERNATIONAL EDUCATION RESEARCH CORPORATION, GALAXY ASSET MANAGEMENT, INC., DAVID | ) | |

CLUFF, Individually and d/b/a RIVERA TRUST 410

Defendants Solely for Purposes of Equitable Relief.

**FINAL JUDGMENT GRANTING PERMANENT INJUNCTION AND OTHER RELIEF AS TO DEFENDANTS RESOURCE DEVELOPMENT INTERNATIONAL, LLC, DAVID EDWARDS, JAMES EDWARDS, JADE ASSET MANAGEMENT SOUND FINANCIAL SERVICES, INC., KEVIN LYNDS, GERALD STOCK, INTERCOASTAL GROUP, LLC, INTERCOASTAL GROUP II, LLC, AND BLACKWOLF HOLDINGS, LLC AND RELIEF DEFENDANTS PACIFIC INTERNATIONAL LIMITED PARTNERSHIP, INTERNATIONAL EDUCATION RESEARCH CORPORATION, AND GALAXY ASSET MANAGEMENT, INC.**

This matter came before this Court on application of Plaintiff Securities and Exchange Commission, seeking entry of final judgment setting disgorgement amounts and awarding civil penalties as to Defendants Resource Development International, LLC ("RDI"), David Edwards ("Edwards"), James Edwards ("J. Edwards"), Jade Asset Management, Ltd. ("Jade"), Sound Financial Services, Inc.

("SFSI"), Kevin Lynds ("Lynds"), Gerald Stock ("Stock"), Intercoastal Group, LLC ("Intercoastal I"), Intercoastal Group II, LLC ("Intercoastal II") and Blackwolf Holdings, LLC, and Relief Defendants Pacific International Limited Partnership ("PILP"), International Education Research Corporation ("IERC") and Galaxy Asset Management, Inc. ("Galaxy") for their failure to appear or otherwise defend in this cause.

This Court having considered the pleadings and declarations on file herein makes the following finds of fact and conclusions of law:

1. The Commission's Complaint was filed on March 25, 2002. Lynds and Jade were served with the Summons and Complaint on March 26, 2002; J. Edwards, SFSI, Stock, Intercoastal I, Intercoastal II, and Blackwolf were served on March 27, 2002; D. Edwards, RDI, PILP, IERC, and Galaxy were served on March 28, 2002.

2. RDI, D. Edwards, J. Edwards, Jade, SFSI, Lynds, Stock, Intercoastal I, Intercoastal II, Blackwolf, PILP,

IERC, and Galaxy failed to answer to the Commission's Complaint, nor have they otherwise appeared before this Court to defend in this cause.

3. RDI, D. Edwards, J. Edwards, Jade, SFSI, Lynds, Stock, Intercoastal I, Intercoastal II, Blackwolf, PILP, IERC, and Galaxy are not infants, or incompetent. RDI, D. Edwards, J. Edwards, Jade, SFSI, Lynds, Stock, Intercoastal I, Intercoastal II, Blackwolf, PILP, IERC, and Galaxy are not eligible for relief under the Soldiers' and Sailors' Civil Relief Act of 1940 [50 U.S.C. Appendix, § 501 et seq.]

4. On May 7, 2002, the Court entered an Order Granting Interlocutory Judgment By Default and Granting Injunctive Relief and Other Equitable Relief as to Defendants and Relief Defendants.

5. The allegations in the Commission's Complaint as to RDI, D. Edwards, J. Edwards, Jade, SFSI, Lynds, Stock, Intercoastal I, Intercoastal II, Blackwolf, PILP, IERC, and Galaxy are, as to them, deemed admitted.

6. The Commission is entitled to a final judgment permanently enjoining RDI, D. Edwards, J. Edwards, Jade, SFSI, Lynds, Stock, Intercoastal I, Intercoastal II, and Blackwolf from violating Sections 5(a), 5(c) and 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §§77e(a), 77e(c) and (a), Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78j(b), and Rule 10b-5, 17 C.F.R. §240.10b-5; and D. Edwards, J. Edwards, Lynds and Stock for additional violations of Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a)(1), as alleged in the Complaint.

7. The Commission is entitled to a final judgment requiring Defendants and Relief Defendants to disgorge the following amounts, equal to the funds and benefits they obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount:

a. Defendants RDI, D. Edwards, J. Edwards, Jade and SFSI: disgorgement in the amount of $37,011,399, plus prejudgment interest of $11,205,739.

b. Defendants Lynds, Stock, Intercoastal I, Intercoastal II, and Blackwolf: disgorgement in the amount of $5,179,949, plus prejudgment interest of $680,875.

c. Relief Defendant PILP: disgorgement in the amount of $2,782,969, plus prejudgment interest of $356,806.

d. Relief Defendant HERC: disgorgement in the amount of $3,234,962 plus prejudgment interest of $425,038.

e. Relief Defendant Galaxy: disgorgement in the amount of $350,000, plus prejudgment interest of $45,986.

8. The Commission is entitled to a final judgment imposing third-tier civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. 78u(d)] in the following amounts:

a. $120,000 each against D. Edwards, J. Edwards, Lynds and Stock.

b. $600,000 each against RDI, Jade, SFSI, Intercoastal I, Intercoastal II, and Blackwolf.

On the basis of the foregoing findings of fact and conclusions of law,

**IT IS THEREFORE ORDERED:**

**I.**

A. Defendants RDI, D. Edwards, J. Edwards, Jade, SFSI, Lynds, Stock, Intercoastal I, Intercoastal II, and Blackwolf, their agents, servants, employees, attorneys, and all persons in active concert or participation with them who receive actual notice of this final judgment by personal service or otherwise, and each of them, are restrained and enjoined from:

B. Violating Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. §77q(a), by directly or indirectly, in the offer or sale of any security by the use of any

means or instruments of transportation or communication in interstate commerce or by the use of the mails: (1) employing any device, scheme or artifice to defraud; or (2) obtaining money or property by means of any untrue statement of material fact or any omission to state a material fact necessary in order to make the statement(s) made, in the light of the circumstances under which they were made, not misleading; or (3) engaging in any transaction, practice or course of business which operates or would operate as fraud or deceit upon the purchaser.

C. Violating Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), 15 U.S.C. §78J(b), by directly or indirectly, in the use of any means or instruments of interstate commerce, of the mails or of any facility of any national securities exchange, using or employing in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered any manipulative or deceptive

device or contrivance in contravention or a rule or regulation prescribed by the Securities and Exchange Commission.

D. Violating Rule 10b-5 of the Securities and Exchange Commission, 17 C.F.R. §240.10b-5, by directly or indirectly, in the use of any means or instruments of interstate commerce, of the mails or of any facility of any national securities exchange: (1) employing any device, scheme or artifice to defraud; (2) making any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statement(s) made, in the light of the circumstances under which were made, not misleading; or (3) engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person.

E. Violating Sections 5(a) and 5(c) of the Securities Act, 15 U.S.C. §77e(a) and (c), by directly or indirectly, (a) making use of any means or instruments of transportation or communication in interstate commerce or of

the mails to sell a security through the use or medium of any prospectus or otherwise; or (b) carrying or causing to be carried through the mails or in interstate commerce, by any means or instruments of transportation, a security for the purpose of sale or for delivery after a sale, unless a registration statement is in effect as to that security; or (3) making use of any means or instruments of transportation or communication in interstate commerce or of the mails to offer to sell or offer to buy through the use or medium of any prospectus or otherwise any security unless a registration statement has been filed with the Securities and Exchange Commission as to that security or while the registration statement is the subject of a refusal order or a stop order or (prior to the effective date of the registration statement) any public proceeding or examination under Section 8 of the Securities Act, 15 U.S.C. §77h.

**II.**

D. Edwards, J. Edwards, Lynds and Stock, and their respective agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of this final judgment by personal service or otherwise, and each of them, are hereby permanently restrained and enjoined from violating Section 15(a) of the Exchange Act, 15 U.S.C. § 78o(a)(1), by, directly or indirectly, engaging in the business of effecting transactions in securities, in the form of investment contracts, or any other security, for their own account or for the account of others, while making use of the mails or any means or instrumentality of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of securities (other than an exempted security, commercial paper, bankers' acceptances or commercial bills), unless registered as a broker or dealer in accordance with Section 15(b) of the Exchange Act [15 U.S.C. § 78o(b)], or is otherwise exempt from registration,

pursuant to Section 15(a)(1) of the Exchange Act [15 U.S.C. § 78o(a)(1)].

**III.**

Defendants and Relief Defendants shall disgorge the follow sums, equal to the funds and benefits they obtained illegally as a result of the violations alleged herein, plus prejudgment interest on that amount:

a. Defendants RDI, D. Edwards, J. Edwards, Jade and SFSI jointly and severally, disgorgement in the amount of $37,011,399, plus prejudgment interest of $11,205,739.

b. Defendants Lynds, Stock, Intercoastal I, Intercoastal II, and Blackwolf, jointly and severally, disgorgement in the amount of $5,179,949, plus prejudgment interest of $680,875.

c. Relief Defendant PILP: disgorgement in the amount of $2,782,969, plus prejudgment interest of $365,806.

d. Relief Defendant IERC: disgorgement in the amount of $3,234,962, plus prejudgment interest of $425,038.

e. Relief Defendant Galaxy: disgorgement in the amount of $350,000, plus prejudgment interest of $45,986.

**IV.**

Defendants shall pay third-tier civil penalties pursuant to Section 20(d) of the Securities Act [15 U.S.C. 77t(d)], and Section 21(d) of the Exchange Act [15 U.S.C. 78u(d)], as follows:

a. D. Edwards, J. Edwards, Lynds and Stock shall each pay a civil penalty in the amount of $120,000.

b. RDI, Jade, SFSI, Intercoastal I, Intercoastal II and Blackwolf shall each pay a civil penalty in the amount of $600,000.

**V.**

Defendants and Relief Defendants shall satisfy the monetary obligations set forth in Paragraphs III. and IV.

above within 30 business days after service of this final judgment by U.S. Postal money order, certified check, bank cashier's check, or bank money order to the Clerk of this Court, together with a cover letter identifying themselves as defendants in this action; setting forth the title and civil action number of this action and the name of this Court; and specifying that payment is made pursuant to this final judgment. Defendants and Relief Defendants shall simultaneously transmit photocopies of such payment and letter to the Commission's counsel in this action. By making this payment, Defendants and Relief Defendants relinquish all legal and equitable right, title and interest in such funds, and no part of the funds shall be returned to Defendants and Relief Defendants.

The Clerk shall deposit the funds into an interest bearing account with the Court Registry Investment System ("CRIS"). These funds, together with any interest and income earned thereon (collectively, the "Fund"), shall be

held by the CRIS until further order of the Court. In accordance with the guidelines set by the Director of the Administrative Office of the United States Courts, the Clerk is directed, without further order of this Court, to deduct from the income earned on the money in the Fund a fee equal to ten percent of the income earned on the Fund. Such fee shall not exceed that authorized by the Judicial Conference of the United States.

The Commission may by motion propose a plan to distribute the Fund subject to the Court's approval. Such a plan may provide that Fund shall be distributed pursuant to the Fair Fund provision of Section 308(a) of the Sarbanes-Oxley Act of 2002. Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil penalties pursuant to this judgment shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Defendants shall not, in any Related Investor Action,

benefit from any offset or reduction of any investor's claim by the amount of any Fair Fund distribution to such investor in this action that is proportionately attributable to the civil penalty paid by Defendants ("Penalty Offset"). If the court in any Related Investor Action grants such an offset or reduction, Defendants shall, within 30 days after entry of a final order granting the offset or reduction, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this Judgment. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Defendant by or on behalf of one or more investors based on substantially the same facts as alleged in the Complaint in this action.

**VI.**

This Court shall retain jurisdiction over this action for all purposes, including for purposes of entertaining any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court, including but not limited to, enforcement of the provisions of this final judgment.

**VII.**

This Final Judgment may be served upon Defendants and Relief Defendants in person, by electronic mail or by certified mail, either by the United States Marshal, the Clerk of the Court, or any member of the staff of the Securities and Exchange Commission.

**VIII.**

There being no just reason for delay, the Clerk of this Court is hereby directed to enter this Final Judgment pursuant to Rules 54, 58 and 79 of the Federal Rules Civil Procedure.

SIGNED this 10th day of November, 2004.

/s/ Jerry Buchmeyer
JERRY BUCHMEYER
UNITED STATES DISTRICT JUDGE

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

---

05-10070

---

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff-Appellee,

v.

RESOURCE DEVELOPMENT INTERNATIONAL LLC; ET AL.,

Defendants,

DAVID EDWARDS; JAMES EDWARDS, GERALD J. STOCK,

Defendants-Appellants.

---

Appeal from the United States District Court for the Northern District of Texas, Dallas

---

**ON PETITION FOR REHEARING**

Before HIGGINBOTHAM, BENAVIDES, DENNIS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

ENTERED FOR THE COURT:

/s/ signature is not legible
United States Circuit Judge

REHG-2

In care of:
1538 North Juniper Street
Tacoma, [98406](without recourse)
Washington Republic
Edwards, James Eugene'
By Special Visitation
All rights reserved

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

| | | |
|---|---|---|
| SECURITIES AND EXCHANGE COMMISSION Plaintiff, vs. RESOURCE DEVELOPMENT INTERNATIONAL, LLC, DAVID EDWARDS, JAMES EDWARDS, JADE ASSET MANAGEMENT, LTD., SOUND FINANCIAL SERVICES, INC., INTERCOASTAL GROUP, LLC, INTERCOASTAL GROUP II, LLC, KEVIN LYNDS, GERALD J. STOCK, BLACKWOLF HOLDINGS, LLC, And WILLIAM WHELAN, Defendants. | ) | CIVIL ACTION 3:02CV0605-H<br><br>RESPONSE by Special Visitation |

**COMES NOW** the living, breathing, sentient man known by the appellation "James Eugene; Edwards" Sui Juris, by special visitation, who is unschooled in law and requests the court take Judicial Notice of the enunciation of principles as stated in *Haines v. Kerner*, 404 U.S. 519, wherein the court has directed that those who are unschooled in law making pleadings shall have the court look to the substance of the pleadings rather than the form, and hereby makes the attached Affidavit, including the related-thereto documents, the "Response" in the above referenced case.

## STATEMENT OF FACTS

1. Plaintiff has failed to state a claim for which relief can be granted. Plaintiff has failed to establish liability and evidence that the fundamental due process and required **opportunity to be heard** during administrative investigative proceedings are afforded alleged defendant, prior to invoking

authority of 15 U.S.C. §§ 77t(b) and 78(u)(d) seeking injunctive

proceedings of the district court. Fifth Amendment to the Constitution of the United States; 15 U.S.C. §§ 77t(a) and 78(u)(a)(1).

2. Plaintiff's Complaint is filed 25 March, 2002; *ex parte* applications made for TRO pending Preliminary Injunction Hearing, filed and granted March 25, 2002; TRO expiration set for April 11, 2002 (7 days in excess of that permitted by law); date for adjudication of Preliminary Injunction, set for March 25, 2002, 2:10 p.m., order executed, March 25, 2002, 2:10 p.m.. This court, by setting the Preliminary Injunction Hearing for a date and time coinciding with the date of issuance of temporary restraining order (TRO), upon *ex parte* application of Plaintiff, exhibits an arbitrary and capricious abuse of discretion, resulting in prejudice to the alleged defendants by denial of fundamental

**notice and hearing** elements of, due process. Fifth Amendment, to the Constitution of the United States.

3. This court's appointment of Receiver, March 25, 2002, **prior** to adjudication of Preliminary Injunction, and determination that injunction is necessary or warranted, or assets of alleged defendant determined to exist and be itemized, is a fundamental **denial of due process** and an arbitrary and capricious abuse of discretion, resulting in this court exceeding its jurisdiction by the unlawful acts of Receiver in a different district, absent complying with statutory requirements of obtaining authority to act in a different district, and violating the rights of the defendant to be secure in his house, papers and personal effects, against **unreasonable search and seizure**, by on March 25, 2002, conducting such activity in the private house and offices of alleged defendant, **without benefit of a warrant** meeting

Constitutional requirements. Fourth Amendment to the Constitution of the United States.

**CONCLUSION**

4. Plaintiff has denied alleged defendant fundamental due process, by failing to comply with Federal law and has no authority to proceed with the injunctive action in this court as it has not verified the liability of defendant by investigation proceeding pursuant to opportunity to be heard provisions of 15 USC §§ 77t(a) and 78(u)(a)(1). Fifth Amendment, U.S. Constitution; and

This court lacks discretion to grant a temporary restraining order without notice and set a hearing of the motion for preliminary injunction to be conducted on the same date and time; and further abuses any discretion enjoyed for issuing a TRO without notice, exceeding the 10 day limit imposed by law. Fifth Amendment, U.S. Constitution; F.R.Civ.P., Rule 65(a)(1), (b); 6(d); and, therefore,

This court lacks jurisdiction to: (1) appoint a Receive and authorize pursuant to receiver appointment orders and over broad search and seizure of undetermined "receivership assets" prior to hearing of motion for preliminary injunction; (2) fail to set a date certain and fixed for a hearing on motion for preliminary injunction, which would provide adequate time to respond, see, Fifth Amendment to the Constitution of the United States; F.R.Civ.P., Rule 65; (3) move through said receiver into a different federal judicial district, see, 28 U.S.C. § 754; (4) move into the sovereign jurisdiction of a state of the union absent compliance with statutory requirements, see, Tenth and Eleventh Amendments to the Constitution of the United States; and (5) forcibly enter into the private homes, automobiles and business offices of alleged defendants and Persons not party to this action, (6) seize at random, personal papers and effects; and (7) restrain the liberty of Persons, in the absence of a proper warrant meeting Constitutional requirements, see, Fourth

Amendment to the Constitution of the United States; F.R.Civ.P., Rule 66, 28 U.S.C. 754

5. **WHEREFORE**, Plaintiff failed in complying with the requirement of providing fundamental due process, as set forth in Fifth Amendment to the Constitution of the United States; 15 U.S.C. §§ 77t(a) and 78(u)(a)(1, and CFR analogs thereto;

Plaintiff: a) lacks standing to sue for want of ripeness, failure to comply with condition precedent statutory requirements for determination of coverage by hearing at the administrative level;

b) is liable for damages and costs incurred by alleged defendant as a result of Plaintiff's unlawful collection efforts in violation of due process of law;

and c) fails to state a claim upon which relief can be granted, therefore justly requiring dismissal of this case by this Court for lack of subject matter jurisdiction.

6. Alleged defendant reserves the right to counter claim, once the jurisdiction of this court and of this matter is determined to exist.

Dated: April 13, 2002

Prepared and submitted

/s/ James Eugene; Edwards
By: James Eugene; Edwards

**VERIFICATION**

I, James Eugene; Edwards, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 13, 2002

/s/ James Eugene; Edwards
James Eugene; Edwards

**CERTIFICATE OF MAILING**

I, James Eugene; Edwards , under penalty of perjury, do hereby declare that I placed a true copy of the above RESPONSE, and attached Affidavit, in a envelope with postage fully affixed thereto, and placed in the United States

Postal Service at Tacoma, Washington, on this the 13th day of

April, 2002, addressed as follows:

Karen Mitchell, Clerk
Untied States Courthouse, Dallas Division
1100 Commerce, Room 14A20
Dallas, Texas 75242

Jeffrey Norris, Esq.
Security & Exchange Commission
801 Cherry Street, Suite 1900
Fort Worth, Texas 75225

Kelly M. Crawford
Scheef & Stone LLP
5956 Sherry Lane, Suite 1400
Dallas, Texas 75225

Patrick Murphy, Esq.
Gutilla & Murphy, PC
4150 west Northern Avenue
Phoenix, Arizona 85051

Executed on this 13th day of April, 2002, at Tacoma, Washington,

/s/ James Eugene; Edwards
James Eugene; Edwards

Washington Republic )
) ss:
Pierce County )

**AFFIDAVIT**

To all to whom these presents shall come, greeting.

Affiant, the living, breathing, flesh-and-blood, sentient *man* known by the appellation "James Eugene; Edwards"' Affiant herein, in his proper person, secured party and alleged "defendant" (hereafter Affiant), in this instant cause known as SECURITIES AND EXCHANGE COMMISSION v. RESOURCE DEVELOPMENT INTERNATIONAL, LLC, et al. (SEC v. RDI), in care of: posting location 1538 North Juniper Street, Tacoma, county known as Pierce, part of the Republic commonly known as Washington, being of sound mind, and over the age of twenty-one, reserving all rights, being unschooled in law, and who has no bar attorney, without an attorney, and having never been represented by an attorney, and does not waive counsel, knowingly and willingly Declares and Duly affirms, according to law, in

special visitation, in good faith, with no intention to delay or obstruct, and with full intent to preserve and promote the public confidence in the integrity and impartiality of the judiciary, that the following statements and facts, in the matter SEC v. RDI and any matter relating to this, are of our Affiant's first-hand knowledge, are the truth, the whole truth, and nothing but the truth, so help me God:

Affiant denies, each and every averment of Plaintiff.

Affiant specifically denies, the allegation of Plaintiff in paragraph 4 of Complaint, that Affiant offered or sold "unregistered prime bank securities" or any other unregistered security.

Affiant specifically denies, the allegation of Plaintiff in paragraph 5 of Complaint, that Affiant "acted as a broker-dealer".

Affiant specifically denies, the allegation of Plaintiff in paragraph 9, that, "The investments offered and sold by defendants are 'securities'..."

Affiant specifically denies, the allegation of Plaintiff in paragraph 11, that, "This Court has jurisdiction over this action, and venue is proper, pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Section 27 of the Exchange Act [15 U.S.C. § 78aa]."

Affiant declares, that any contracts entered into by Affiant, mistakenly referred to by Plaintiff as "unregistered prime bank securities", are private and exempt from registration as securities.

Affiant declares, that Affiant is not a person, or a person liable to SEC for purposes of regulation, and Affiant has no liability thereto.

Affiant declares, that at no time has Affiant been requested, required or permitted to submit a statement in writing, under oath or otherwise, concerning any matter the Commission might wish to investigate.

Affiant declares, that if Affiant is determined to be a person and a person liable to SEC for purposes of regulation, that

Affiant has been denied due process as guaranteed by the Fifth Amendment to the Constitution of the United States, mandated in 15 U.S.C. §§ 77t(a) and 78(u)(a)(1)and CFR analogs thereto, and required as a condition precedent to the severe sanction of injunction, and prerequisite for subject matter jurisdiction in any district court.

Affiant declares, that the United States District Court For The Northern District Of Texas, Dallas Division, is not a "court of the United States", as that term is defined in law, possessing and exercising authority as conferred by Article III of the Constitution of the United Sates; that this Court does not enjoy subject matter jurisdiction of the instant cause; and that venue in this Court is not proper.

Affiant declares, that at no time prior to the search of Affiant's residence and offices and seizure of personal property, commencing approximately 2:00 p.m., PST, March 25, 2002, did Affiant have process or notice of any pending civil or criminal action naming Affiant.

Affiant declares, that at no time prior to March 26, 2002, did Affiant have notice of this instant action, or of motion for preliminary injunction.

Affiant declares, that Affiant first received notice of Plaintiff's motion for preliminary injunction on March 25, 2002, approximately 4 hours after the scheduled, conducted and concluded March 25, 2002, 2:10 p.m. hearing, as set forth in paragraph 16, Temporary Restraining Order (TRO), etc., a facsimile copy provided to Affiant at the time of intrusion by Plaintiff into Affiant's private house.

Affiant declares, that Affiant had no opportunity to be heard prior to March 25, 2002, and therefore, Affiant has been denied due process of law.

Affiant declares, that the TRO expired on April 4, 2002, as an operation of law, and that the Court lacks discretion to exceed the 10 day limitation absent notice, consent and good cause appearing prior to expiration, none of which are in evidence.

Affiant declares, that Affiant's Constitutional rights to privacy, security and substantive due process, have been violated and denied by Plaintiff.

Affiant, declares that, Affiant is of the belief that Plaintiff is bereft of any subject matter jurisdiction, for want of a justiciable cause, and that any orders issuing from this Court, are null and void *abinitio*, and may be ignored with impunity.

Affiant declares, that Affiant has not, does not, and will not consent to be sued pursuant to the civil complaint known as, No. 3:02-CV-0605-H United States District Court for the Northern District of Texas, Dallas Division, dated March 25th, 2002.

Affiant declares, that Affiant owns the names and any and all derivatives and variations in the spelling of said names "JAMES EUGENE EDWARDS" and "James Eugene; Edwards'."

Affiant declares, that Affiant is no person, nor is Affiant a surety for the following juristic person "JAMES EUGENE

EDWARDS' "; nor is Affiant a surety, nor accommodation party for any person.

Affiant declares, that Affiant never authorized Lawrence J. Warfield, Jeffrey B. Norris, Jerry Buchmeyer Kelly M. Crawford, or Patrick Murphy, to use, in any manner whatsoever, Affiant's property, the trade names "JAMES EUGENE EDWARDS' ", owned and secured by Affiant.

Affiant declares, that Affiant never authorized the United States, United States District Court for the Northern District of Texas, Dallas Division, United States of America, United States Department of Justice, Securities and Exchange Commission nor any of its Agents, to use, in any manner whatsoever, Affiant's property, owned and secured by Affiant.

Affiant, believing in a life hereafter, having rewards and punishments, does solemnly swear that the foregoing facts are the truth, the whole truth and nothing but the truth.

Affiant further sayeth naught.

Signature of Affiant: /s/ James Eugene; Edwards

On this 13th day of the Fourth Month in the Year of Our Lord Two Thousand Two, before me, Tiffany Farrell, a Notary Public in and for the above cited state, came, the living, breathing, sentient man known by the appellation "James Eugene; Edwards", personally known by me, or proved to me on the basis of satisfactory evidence, to be the man whose signature is subscribed below the above declaration of facts. The said man solemnly swore that the above declarations are the truth, the whole truth and nothing but the truth.

Duly sworn to and subscribed before me, I, therefore, set forth my hand and seal in affirmation of the execution thereof.

/s/ Tiffany Farrell
Notary Public
Seal states expiration date of 6-16-03; State of Washington

In care of:
6010 75th Avenue, Ct. W.
University Place, [98409](without recourse)
Washington Republic
Edwards, David Eugene
By Special Visitation
All rights reserved

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

| | | |
|---|---|---|
| SECURITIES AND EXCHANGE COMMISSION<br>Plaintiff.<br>vs.<br>RESOURCE - DEVELOPMENT INTERNATIONAL, LLC, DAVID EDWARDS, JAMES EDWARDS, JADE ASSET MANAGEMENT, LTD., SOUND FINANCIAL SERVICES, INC., INTERCOASTAL GROUP, LLC, INTERCOASTAL GROUP II, LLC, KEVIN LYNDS, GERALD J. STOCK, BLACKWOLF HOLDINGS, LLC, And WILLIAM WHELAN,<br>Defendants. | ) | CIVIL ACTION<br>3:02CV0605-H<br><br><br><br>RESPONSE by Special Visitation |

**COMES NOW** the living, breathing, sentient man known by the appellation "David Eugene: Edwards'" (hereafter alleged defendant), Sui Juris, by special visitation, who is unschooled in law and requests the court take Judicial Notice of the enunciation of principles as stated in *Haines v. Kerner*, 404 U.S. 519, wherein the court has directed that those who are unschooled in law making pleadings shall have the court look to the substance of the pleadings rather than the form, and hereby makes the attached Affidavit, including the related-thereto documents, the "Response" in the above referenced case.

## STATEMENT OF FACTS

1. Plaintiff has failed to state a claim for which relief can be granted. Plaintiff has failed to establish liability and evidence that the fundamental due process and required **opportunity to be heard** at administrative investigative proceedings are afforded alleged defendant, prior to invoking

authority of 15 U.S.C. §§ 77t(b) and 78(u)(d) seeking injunctive in the district court. Fifth Amendment to the Constitution of the United States; 15 U.S.C. §§ 77t(a) and 78(u)(a)(1).

2. Plaintiff's Complaint is filed 25 March, 2002; *ex parte* applications made for TRO pending Preliminary Injunction Hearing, filed and granted March 25, 2002; TRO expiration set for April 11, 2002 (7 days in excess of that permitted by law); date for adjudication of Preliminary Injunction, set for March 25, 2002, 2:10 p.m.; and TRO is executed, March 25, 2002, 2:10 p.m.. This court, by setting the Preliminary Injunction Hearing for a date and time coinciding with the date of issuance of temporary restraining order (TRO), upon *ex parte* application of Plaintiff, exhibits an arbitrary and capricious abuse of discretion, resulting in prejudice to the alleged defendants by denial of fundamental

**notice and hearing** elements of, due process. Fifth Amendment to the Constitution of the United States.

3. This court's appointment of Receiver, March 25, 2002, prior to expiration of TRO; prior to adjudication of Motion for Preliminary Injunction; prior to determination that injunction is necessary, warranted or assets of alleged defendant determined to exist and be itemized, is a fundamental **denial of due process**, and an arbitrary and capricious abuse of discretion, resulting in this court exceeding its jurisdiction by the unlawful acts of Receiver in a different district; Receiver failing to comply with statutory requirements of obtaining authority to act in a different district; and violating the rights of the alleged defendant to be secure in his house, papers and personal effects, against **unreasonable search and seizure**, occurring on March 25, 2002; and, conducting such activity in the private house, vehicles and offices of alleged defendant, **without benefit of**

**a warrant** meeting Constitutional requirements of the Fourth Amendment to the Constitution of the United States.

**CONCLUSION**

4. Plaintiff has denied alleged defendant fundamental due process, by failing to comply with Federal law and has no authority to proceed with the injunctive action in this court as it has not verified the liability of defendant by investigation proceeding pursuant to opportunity to be heard provisions of 15 USC §§ 77t(a) and 78(u)(a)(1). Fifth Amendment, U.S. Constitution; and

5. This court lacks discretion to grant a temporary restraining order without notice and to set a hearing of the motion for preliminary injunction to be conducted on the same date and time; and further abuses any discretion enjoyed for issuing a TRO without notice, exceeding the 10 day limit imposed by law. Fifth Amendment, U.S. Constitution; F.R.Civ.P., Rule 65(a)(1), (b); 6(d); and, therefore,

6. This court lacks authority to: (1) appoint a Receiver and authorize pursuant to receiver appointment orders, over broad search and seizure of undetermined "receivership assets" prior to hearing of motion for preliminary injunction and (2) fail to set a date certain and fixed for a hearing on motion for preliminary injunction, which would provide adequate time to respond. See, Fifth Amendment to the Constitution of the United States; F.R.Civ.P., Rules 65, 66; (3) move through said receiver into a different federal judicial district. See, 28 U.S.C. § 754; (4) move into the sovereign jurisdiction of a state of the union absent compliance with statutory requirements, see, Tenth and Eleventh Amendments to the Constitution of the United States; and (5) forcibly enter into the private houses, automobiles and business offices of alleged defendants and Persons not party to this action, (6) seize at random personal papers and effects, and (7) restrain the liberty of Persons, in the absence of a proper warrant meeting Constitutional

requirements. See, Fourth Amendment to the Constitution of the United States; F.R.Civ.P., Rule 66; 28 U.S.C. 754

7. **WHEREFORE**, Plaintiff failed in complying with the requirement of providing fundamental due process, as set forth in Fifth Amendment to the Constitution of the United States; 15 U.S.C. §§ 77t(a) and 78(u)(a)(1, and CFR analogs thereto;

Plaintiff: a) lacks standing to sue for want of ripeness, failure to comply with condition precedent statutory requirements for determination of coverage by hearing at the administrative level;

b) is liable for damages and costs incurred by alleged defendant as a result of Plaintiff's unlawful collection efforts in violation of due process of law;

and c) fails to state a claim upon which relief can be granted, therefore justly requiring dismissal of this case by this Court for lack of subject matter jurisdiction.

8. Alleged defendant reserves the right to counter claim, once the jurisdiction of this court and of this matter is determined to exist.

Dated: April 13, 2002

Prepared and submitted

/s/ David Eugene; Edwards
By: David Eugene; Edwards'

**VERIFICATION**

I, David Eugene; Edwards, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 13, 2002

/s/ David Eugene; Edwards
David Eugene; Edwards'

**CERTIFICATE OF MAILING**

I, David Eugene; Edwards', under penalty of perjury, do hereby declare that I placed a true copy of the above RESPONSE, and attached Affidavit, in a envelope with postage fully affixed thereto, and placed in the United States

Postal Service at Tacoma, Washington, on this the 13th day of

April, 2002, addressed as follows:

Karen Mitchell, Clerk
Untied States Courthouse, Dallas Division
1100 Commerce, Room 14A20
Dallas, Texas 75242

Jeffrey Norris, Esq.
Security & Exchange Commission
801 Cherry Street, Suite 1900
Fort Worth, Texas 75225

Kelly M. Crawford
Scheef & Stone LLP
5956 Sherry Lane, Suite 1400
Dallas, Texas 75225

Patrick Murphy, Esq.
Gutilla & Murphy, PC
4150 west Northern Avenue
Phoenix, Arizona 85051

Executed on this 13th day of April, 2002, at Tacoma, Washington,

/s/ David Eugene; Edwards
David Eugene; Edwards

Washington Republic )
) ss:
Pierce County )

**AFFIDAVIT**

To all to whom these presents shall come, greeting,

Affiant, the living, breathing, flesh-and-blood, sentient *man* known by the appellation "David Eugene; Edwards"' Affiant herein, in his proper person, secured party and alleged "defendant" (hereafter Affiant), in this instant cause known as SECURITIES AND EXCHANGE COMMISSION v. RESOURCE DEVELOPMENT INTERNATIONAL, LLC, et al. (SEC v. RDI), in care of: posting location 6017 75th Avenue, CT.W., University Place, county known as Pierce, part of the Republic commonly known as Washington, being of sound mind, and over the age of twenty-one, reserving all rights, being unschooled in law, and who has no bar attorney, without an attorney, and having never been represented by an attorney, and does not waive counsel, knowingly and willingly Declares and Duly affirms, according to law, in

special visitation, in good faith, with no intention to delay or obstruct, and with full intent to preserve and promote the public confidence in the integrity and impartiality of the judiciary, that the following statements and facts, in the matter SEC v. RDI and any matter relating to this, are of our Affiant's first-hand knowledge, are the truth, the whole truth, and nothing but the truth, so help me God:

Affiant denies, each and every averment of Plaintiff.

Affiant specifically denies, the allegation of Plaintiff in paragraph 4 of Complaint, that Affiant offered or sold "unregistered prime bank securities" or any other unregistered security.

Affiant specifically denies, the allegation of Plaintiff in paragraph 5 of Complaint, that Affiant "acted as a broker-dealer".

Affiant specifically denies, the allegation of Plaintiff in paragraph 9, that, "The investments offered and sold by defendants are 'securities'..."

Affiant specifically denies, the allegation of Plaintiff in paragraph 11, that, "This Court has jurisdiction over this action, and venue is proper, pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], and Section 27 of the Exchange Act [15 U.S.C. § 78aa]."

Affiant declares, that any contracts entered into by Affiant, mistakenly referred to by Plaintiff as "unregistered prime bank securities", are private and exempt from registration as securities.

Affiant declares, that Affiant is not a person, or a person liable to SEC for purposes of regulation, and Affiant has no liability thereto.

Affiant declares, that at no time has Affiant been requested, required or permitted to submit a statement in writing, under oath or otherwise, concerning any matter the Commission might wish to investigate.

Affiant declares, that if Affiant is determined to be a person and a person liable to SEC for purposes of regulation, that

Affiant has been denied due process as guaranteed by the Fifth Amendment to the Constitution of the United States, mandated in 15 U.S.C. §§ 77t(a) and 78(u)(a)(1), and required as a condition precedent to the severe sanction of injunction, and prerequisite for subject matter jurisdiction in any district court.

Affiant declares, that the United States District Court For The Northern District Of Texas, Dallas Division, is not a "court of the United States", as that term is defined in law, possessing and exercising authority as conferred by Article III of the Constitution of the United Sates; that this Court does not enjoy subject matter jurisdiction of the instant cause; and that venue in this Court is not proper.

Affiant declares, that at no time prior to the search of Affiant's residence and offices and seizure of personal property, commencing approximately 2:00 p.m., PST, March 25, 2002, did Affiant have process or notice of any pending civil or criminal action naming Affiant.

Affiant declares, that at no time prior to March 28, 2002, did Affiant have notice of this instant action, or of motion for preliminary injunction.

Affiant declares, that Affiant first received notice of Plaintiff's motion for preliminary injunction on March 28, 2002, approximately 65 hours after the scheduled, conducted and concluded March 25, 2002, 2:10 p.m. hearing, as set forth in paragraph 16 of the Temporary Restraining Order (TRO).

Affiant declares, that Affiant had no opportunity to be heard prior to March 25, 2002, and therefore, Affiant has been denied due process of law.

Affiant declares, that the TRO expired on April 4, 2002, as an operation of law, and that this Court lacks discretion to exceed the 10 day limitation absent notice, consent and good cause appearing prior to expiration, none of which are in evidence.

Affiant declares, that Affiant's Constitutional rights to privacy, security and substantive due process, have been violated and denied by Plaintiff.

Affiant declares, that, Affiant is of the belief that Plaintiff is bereft of any subject matter jurisdiction, for want of a justiciable cause, and that any orders issuing from this Court, are null and void *abinitio*, and may be ignored with impunity.

Affiant declares, that Affiant has not, does not, and will not consent to be sued pursuant to the civil complaint known as, No. 3:02-CV-0605-H United States District Court for the Northern District of Texas, Dallas Division, dated March 25th, 2002.

Affiant declares, that Affiant owns the names and any and all derivatives and variations in the spelling of said names "DAVID EUGENE EDWARDS"' and "David Eugene; Edwards'."

Affiant declares, that Affiant is no person, nor is Affiant a surety for the following juristic person "DAVID EUGENE

EDWARDS'"; nor is Affiant a surety, nor accommodation party for any person.

Affiant declares, that Affiant never authorized Lawrence J. Warfield, Jeffrey B. Norris, Jerry Buchmeyer Kelly M. Crawford, or Patrick Murphy, to use, in any manner whatsoever, Affiant's property, the trade names "DAVID EUGENE EDWARDS'", owned and secured by Affiant.

Affiant declares, that Affiant never authorized the United States, United States District Court for the Northern District of Texas, Dallas Division, United States of America, United States Department of Justice, Securities and Exchange Commission nor any of its Agents, to use, in any manner whatsoever, Affiant's property, owned and secured by Affiant.

Affiant, believing in a life hereafter, having rewards and punishments, does solemnly swear that the foregoing facts are the truth, the whole truth and nothing but the truth.

Affiant further sayeth naught.

Signature of Affiant: /s/ David Eugene; Edwards

On this 13th day of the Fourth Month in the Year of Our Lord Two Thousand Two, before me, Tiffany Farrell, a Notary Public in and for the above cited state, came, the living, breathing, sentient man known by the appellation "David Eugene; Edwards"', personally known by me, or proved to me on the basis of satisfactory evidence, to be the man whose signature is subscribed below the above declaration of facts. The said man solemnly swore that the above declarations are the truth, the whole truth and nothing but the truth.

Duly sworn to and subscribed before me, I, therefore, set forth my hand and seal in affirmation of the execution thereof.

/s/ Tiffany Farrell
Notary Public
Seal states expiration date of 6-16-03; State of Washington

(2)

Supreme Court, U.S.
FILED
OCT 27 2006
OFFICE OF THE CLERK

No. 06-92

IN THE

# Supreme Court of the United States

DAVID EUGENE EDWARDS AND
JAMES EUGENE EDWARDS,

*Petitioners*,

v.

SECURITIES AND EXCHANGE COMMISSION,

*Respondents*.

**On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit**

## PETITION FOR REHEARING FOR WRIT OF CERTIORARI

David Eugene Edwards
*Pro se*
V68885
Bldg. 1; #108
CSP Solano
P.O. Box 4000
Vacaville, CA 95696

James Eugene Edwards
*Pro se*
V68959
Bldg. 1; #108
CSP Solano
P.O. Box 4000
Vacaville, CA 95696

## CERTIFICATION OF GOOD FAITH

Petitioners David Eugene Edwards and James Eugene Edwards hereby certify that this Petition for Rehearing is made in good faith and not for delay and is restricted to substantial grounds not previously presented and intervening circumstances of a substantial or controlling effect.

/s/ David Eugene Edwards
David Eugene Edwards

/s/ James Eugene Edwards
James Eugene Edwards

## TABLE OF CONTENTS

**Page**

Certification of Good Faith ..... i

Table of Contents ..... ii

Table of Authorities ..... iii

I. Substantial Grounds Not Previously Presented ..... 1

II. Intervening Circumstances of a Substantial or Controlling Effect ..... 2

1. The Receiver failed to give bond to the court and at no time has filed a bond with the Clerk of the Court as Ordered ..... 3

2. The Receiver failed to conscientiously perform his duties and responsibilities imposed by the Order by violating Constitutional rights and committing criminal acts ..... 4

3. The Receiver violated federal law ..... 6

Conclusion..... 10

APPENDIX

Letters to/from United States Supreme Court Clerk ..... App. 1

Letter from Leigh Lyon, Division Manager, United States District Court, Northern District of Texas, Dallas ..... App. 4

Affidavit of Cyndi Setser ..... App. 6

## TABLE OF AUTHORITIES

**CASES** **PAGES**

*Claredon v. Thompson,*
523 U.S. 538 (1988)..... 3

*Cupp v. Murphy,*
412, U.S. 291, 294-96 (1973)..... 10

*Hale v. Henkel,*
201 U.S. 43 (1906)..... 9

*Hunnsinger v. Gateway Management,*
169 FRD 172 (1996)..... 5

*Jolly v. Coughlin,*
76 F3d 468, 482 (2nd Cir. 1996) ..... 10

*Levin v. Garfinkle,*
514 F.Supp. 1160, 1166 (1981)..... 8

*Ruhrgas v. Marathon Oil,*
526 U.S. 574 (1999)..... 10

*SEC v. Vision Communication Inc.,*
74 F.3d 287, 291 (C,.A.D.C. 1996)..... 7

*Scott v. McNeal,*
154 U.S. 34, 46, 28 L.Ed 896, 14 S.Ct. Rep. 1108..... 6

*U.S. v. Throckmorton,*
98 U.S. 61, 65..... 3

**STATUTES AND RULES**

28 U.S.C. § 754 ..... 7, 8, 9

United States Supreme Court Rule 29(2) ..... 1

**UNITED STATES CONSTITUTION**

Fourth Amendment ..... 10

Fifth Amendment ..... 10

**UNIFORM COMMERCIAL CODE**

UCC-2503 ..... 8, 9

1

1

## SUBSTANTIAL GROUNDS

## NOT PREVIOUSLY PRESENTED

Petitioners raised an issue of grave error in their Petition for Writ of Certiorari which has kept all arguments raised by Petitioners from being heard in any court, including this one, since May 7, 2002, when Petitioners' original answer to complaint was struck by the trial court. This Court's clerk has acknowledged the importance of the date of service by docketing the "filed" date as May 20, 2006 (date Petitioners placed document with third party carrier) and not the received date of May 23, 2006. See letters at App. 1-3. Pursuant to the United States Supreme Court Rule 29(2), the standard for docketed filing dates is the date it is placed with the United States Postal Service or other carrier for delivery within 3 days Petitioners respectfully request the honorable judges of this Court review this issue again.

## II

## INTERVENING CIRCUMSTANCES OF A SUBSTANTIAL OR CONTROLLING EFFECT

On or about August 1, 2006, Petitioners discovered the Receiver appointed by the trial court failed to give bond as required by the Court and mandated by Congress as a condition precedent to the Receiver enjoying jurisdiction in a different district.

Receiver's bond has never been given and with full knowledge of duty and failure to comply with the Court's orders and laws, the Receiver, and possibly the trial court, continues to work a fraud by asserting as recently as September 26, 2006, in "Order Re-Appointing Temporary Receiver", CR 1315[1] that bond was previously filed with the Clerk of the Court. "Fraud vitiates the most solemn of contract, documents

---

[1] CR – Court Record in trial court, United States District Court, Northern District of Texas, Dallas Division (USDC NDT), Case Number 3:02-CV-0605.

and even judgments." *U.S. v. Throckmorton*, 98 U.S. 61, 65 and *Claredon v. Thompson,* 523 U.S. 538 (1988)

The Order Appointing Temporary Receiver (OATR) in case number 3:02-CV-0605, CR 8, p. 2, para. 2 evidences that the first order of the court is to appointed Receiver, Lawrence J. Warfield, to file a bond with the Clerk of the court:

> "The Receiver shall file with the Clerk of this Court a bond in the sum of $10,000, without need for sureties approved by the Court, to assure his conscientious performance of the duties and responsibilities imposed by this Order."

**1. The Receiver failed to give bond to the Court and at no time has filed a bond with the Clerk of the Court as ordered (OATR CR 8, page 2, paragraph 2).**

Evidence: (A) Letter dated September 7, 2006 from Leigh Lyon, Division Manager, USDC NDT Clerk's office, letter attached hereto at App. 4-5; and (B) testimony[2], under

---

[2] Transcripts of September 12, 2006 hearing have not been obtained as of this date. Acquiring transcripts from Court Reporter, Joe Belton, has been a challenge for Petitioners in the past.

oath on September 12, 2006 at a hearing before Judge Jerry Buchmeyer, of Lawrence J. Warfield, Receiver, that he had not personally filed said bond with the Clerk of the court, and which Kelly M. Crawford, attorney for Receiver, stipulated no bond was filed with the Clerk of the court; and (C) affidavit of Cynthia Faye Setser, who reviewed the record with clerks, finding no original bond, and only an alleged copy of Receiver Bond filed two years after appointment, March 24, 2004, as CR 493. Affidavit attached hereto at App. 6-7.

**2. The Receiver failed to conscientiously perform his duties and responsibilities imposed by the Order by violating Constitutional rights and committing criminal acts.**

On March 25, 2002, the Securities and Exchange Commission filed its Complaint in USDC NDT as Case No. 3:02-CV-0605; Lawrence J. Warfield was appointed Receiver at approximately 2:15 PM CST March 25, 2002. Mr. Warfield was in Tacoma, Washington on March 25, 2002 at 2:00 PM

PST seizing personal and real property of defendants in Case No. 3:02-CV-0605, on the authority of the OATR.

Evidence: September 12, 2006 hearing[3] Lawrence J. Warfield under oath testified: (A) on March 25, 2002 he personally entered the offices of Resource Development International, seized the books, records and computers thereof; and (B) he did not have a search warrant which was demanded, and that he acted on the authority of OATR; and (C) and Receiver's Bond which he allegedly signed on March 25, 2002, was "probably a facsimile copy".

U.S. Marshals first served summons, complaint and OATR on defendants March 27, 2002, CR 22 and 28. The USDC did not have jurisdiction over the lawsuit until service of process was effected, March 27, 2002 at the earliest. Service of process marks the start of court's jurisdiction over the lawsuit, *Hunnsinger v. Gateway Management,* 169 FRD 152 (1996).

---

[3] Transcripts for this hearing have not been obtained as of this date.

The Court could not have taken possession of any of the defendant's assets until the earliest, April 11, 2002, Temporary Restraining Order expiration and Preliminary Injunction hearing; and therefore the Court did not have possession to vest in Receiver on March 25, 2002. Defendants received no notice prior to Receiver entering their homes and office and seizing their real and personal property.

> "No judgment of the court is due process of law, if rendered without jurisdiction in the court, or notice to the party." *Scott v. McNeal,* 154 U.S. 34, 46, 38 L.Ed 896, 14 S.Ct. Rep. 1108.

Receiver could not have secured a bond and filed with the Court in Dallas, Texas while in Tacoma, Washington prior to entering private homes and offices within two hours of his appointment.

**3. The Receiver violated federal law.**

Federal law requires a Receiver to give bond as a condition precedent to being vested with jurisdiction, control of property situated in a different district and right to take

possession thereof. 28 U.S.C. § 754; The Receiver never enjoyed jurisdiction, control or right to take possession of Receivership assets in a different district. Receiver, as agent of the court, enjoys only such authority as possessed by the court.

> "...that power exists precisely because the court has taken control over the property placed in receivership." *SEC v. Vision Communications, Inc.*, 74 F.3d 287, 291 (CA D.C. 1996).

The Receiver's failure to give bond as required by the court is estoppel to Receiver being vested with jurisdiction, control and right to take possession of property situated in a different district, 28 U.S.C. § 754:

> "A receiver appointed in any civil action or proceeding involving property, real, personal or mixed, situated in different districts shall, **upon giving bond as required by the court**, be vested with complete jurisdiction and control of all such property with the right to take possession thereof." 28 U.S.C. § 754 (Bold emphasis added.)

> "When a bond is executed to the United States by a fiduciary or public officer, conditioned for the performance of certain duties, in the performance of which private persons are

> interested, a person aggrieved by a breach of the condition may maintain an action thereon in his own name against the obligor and his surety to recover damages for the injury suffered by him in consequence of the breach. The custodian of the bond shall furnish a certified copy thereof to the party for that purpose on payment of the legal fees therefore." Uniform Commercial Code (UCC)-2503; DC UCC 28-2503, Washington and Texas analogs thereto.

It is the act of "giving bond" which completes the contract between the court and Receiver for the protection of the court and interested persons and vests jurisdiction and control of property situated in different districts in the Receiver when the court requires a bond. Jurisdiction, control and right to possession does not vest until bond is given. The Court required a bond be given to the Court by filing with the Clerk, see OATR CR 8, p.2, para.2.

In the seminal case on the point of effecting receivership per 28 U.S.C. § 754, the court required a bond and the receivership could not take effect until bond was given, i.e., filed with the court. *Levin v. Garfinkle*, 514 F.Supp. 1160,

1166 (1981).

In the instant case, no bond was given by the Receiver and filed with the court. Interested persons are left without remedy when the bond is not filed, UCC-2503. Failure to comply with 28 U.S.C. § 754 means jurisdiction and control of property situated in any district different than the Northern District of Texas never vested in Lawrence Warfield as Receiver.

The seizure of Petitioners' property on March 25, 2002 by the Court through its Receiver in absence of bond violates the Constitutional immunities of Petitioners, as declared by this Court in *Hale v. Henkel,* 201 U.S. 43 (1906):

> "the individual may stand upon his Constitutional rights as a citizen... Among his rights are a refusal to incriminate himself and the immunity of himself and his property from arrest or seizure except under a warrant of the law." (Underline emphasis added.)

The Receiver was without any authority on March 25, 2002 and has remained without any authority as a Receiver

until present date for want of giving bond and the acts of Receiver are violation of the rights, freedoms[4] and immunities of Petitioners as guaranteed by the Fourth and Fifth Amendments to the Constitution of the United States and the allegation of a violation of a Constitutional right deprives a court of jurisdiction, *Jolly v. Coughlin,* 76 F3d 468, 482 (2nd Cir. 1996).

> "A lack of personal or subject matter jurisdiction exists when the court acted in some manner inconsistent with the constitutional due process, or otherwise acted beyond the powers granted to it under the law." *Cupp v. Murphy*, 412, U.S. 291, 294-96 (1973); and
>
> "Jurisdiction is fundamental – without it, courts cannot proceed at all in any case." *Ruhrgas v. Marathon Oil*, 526 U.S. 574 (1999); and

## CONCLUSION

The petition for rehearing for a writ of certiorari should be granted.

---

[4] Petitioners are incarcerated in California pursuant to a conviction garnered upon Receiver's testimony and evidence obtained March 25, 2002 and subsequent thereto in this case.

Dated: October 26, 2006

Respectfully submitted,

David Eugene Edwards,
Petitioner,
Appearing *pro se*
V68885
Bldg. 1; #108
CSP Solano
P.O. Box 4000
Vacaville, CA 95696

James Eugene Edwards,
Petitioner,
Appearing *pro se*
V68959
Bldg. 1; #108
CSP Solano
P.O. Box 4000
Vacaville, CA 95696

May 20, 2006

Kathy Thaut
4008 Brouse Blvd. West
University Place, WA 98466

Clerk of the Court
Supreme Court of the United States
Washington, DC 20543

RE: Filing Petition for Writ of Certiorari
Federal Express #851997876740

Dear Clerk,

Please find enclosed forty (40) copies of a Petition for Writ of Certiorari and Proof of Service as well as a check attached to this letter in the amount of $300 for David and James Edwards. David and James are my brother and father respectively and they have asked me to type up, duplicate, file and serve this writ for them as they are currently incarcerated in the State of California serving a sentence after conviction on a separate but related action to the civil judgment they are asking the Court to review. Their conviction is on appeal.

Because I have the ability to prepare forty copies and pay the filing fee it is not necessary for them to proceed *in forma pauperis* however I am not an attorney. Therefore I am unfamiliar with how to prepare this writ in booklet format pursuant to Rule 33.1. Due to the Petitioners appearing *pro se* I am hopeful it is sufficient to prepare the document pursuant to Rule 33.2.

If you find the enclosed documents are in a form that does not comply, pursuant to Rule 14.5, please return them to

me along with a copy of the letter indicating the deficiency as David and James do not have the ability to forward that many documents to me. The original letter can be sent directly to Petitioners if necessary or I can forward them a copy.

Thank you for your assistance with the filing of my family's Petition for Writ of Certiorari.

Sincerely,

RECEIVED
MAY 23 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

/s/ Kathy Thaut
Kathy Thaut
253-405-7128

**Supreme Court of the United States**
**Office of the Clerk**
**Washington, DC 20543-0001**

William K. Suter
Clerk of the Court
(202) 479-3011

July 20, 2006

Mr. David Eugene Edwards
Prisoner ID V68885
CSP Solano
Bldg. 1, #108
P.O. Box 4000
Vacaville, CA 95696

Re: David Edwards and James Edwards
v. Securities and Exchange Commission
No. 06-92

Dear Mr. Edwards:

The petition for a writ of certiorari in the above entitled case was filed on May 20, 2006 and placed on the docket July 20, 2006 as No. 06-92.

Forms are enclosed for notifying opposing counsel that the case was docketed.

Sincerely,
**William K. Suter**, Clerk
by
/s/ Melissa Blalock
Melissa Blalock
Case Analyst

Enclosures

App. 4

United States District Court
Northern District of Texas

Karen Mitchell
Clerk of the Court

1100 Commerce, Room 1452
Dallas, Texas 75242

Ms. Kathy Thaut
4008 Brouse Blvd. West
University Place, WA 98466

Subject: SEC v. Resource Development International, LLC, *et al*; 3:02cv605-R

Dear Ms. Thaut:

I am in receipt of your letter request for the clerk to respond to questions regarding bonds filed in the above case. Unfortunately, the time necessary to research your questions would be quite substantial and therefore your request does not fall into the scope of normal correspondence the clerk's office may quickly respond to.

Since your assistant visited our office this afternoon, and I helped her personally at our intake counter, I am happy to provide information regarding one filing in the case. She inquired specifically about Document No. 493, filed March 24, 2004, by Kelly M. Crawford, Charlene C. Koonce, and Stephen J. Womak, attorneys for the Receiver Lawrence J. Warfield. The document is titled "Notice of Bond of Receiver" and has a copy of a bond attached as Exhibit A. I have enclosed a copy of the filing in its entirety for your convenience.

Your assistant then request that I provide a certified statement that the bond attached to this document was copy and not the

original. Although the attachment does appear to be a copy, this is not a customary certification the Clerk's Office issues, and therefore I must refer you to the judiciary policy entitled "Testimony of Judiciary Personnel and Production of Judiciary Records in Legal Proceedings." This policy is available on this court's website at: http://www.txnd.uscourts.gov/rules/judiciary_policies.htm.

I regret I cannot assist you further at this time and hope you can appreciate the position the clerk's office is in with ever-dwindling resources.

Cordially,

/s/ Leigh Lyon
Leigh Lyon
Division Manager

Enclosure

cc: Senior U.S. District Judge Jerry Buchmeyer

## AFFIDAVIT OF CYNTHIA FAYE SETSER

I, Cynthia Faye Setser, declare under penalty of perjury, 28 U.S.C. § 1746(1), under the laws of the United States of America, that the following is true and correct.

1. That, I have personal knowledge of each of the facts stated here; and

2. That, I am of lawful age and am competent to make this Affidavit; and

3. That, I am not a ward of, or under the guardianship of or conservatorship of another person or entity; and

4. That, this Affidavit is made as a matter of public record, in my own sovereign right, in sui juris capacity; and

5. That, I am a flesh-and-blood, natural born woman, one of the People and a member of the sovereign class, "We the People"; and

6. That, it is my information and belief that this first-class status enjoys the God-given, "unalienable rights" declared by the Declaration of Independence and guaranteed by the Constitution of the United States of America; and

7. That, on Thursday, September 7, 2006 I went to the Clerk's office of the United States District Court for the Northern District of Texas, Dallas Division located at 1100 Commerce Street, Room 1452, Dallas, Texas 75242; and

8. That, I did ask the Clerk for a certified copy of the original bond for Case No. 3:02-CV-0605-R; and

9. That, I did review several of the first pages of the docket for Case No. 3:02-CV-0605-R with the Clerk and there was no entry regarding bond; and

10. That, the Clerk did retrieve the Hartford Insurance file and brought it to the counter to look through discovered no bond for Case No. 3:02-CV-0605-R was in that file either; and

11. That, I with the assistance of the Leigh Lyon did find Docket #493 filed on March 24, 2004 – Notice of Bond; and

12. That, I did see that the Notice did state a true and correct **copy** of bond was attached as Exhibit A; and

13. That, I did request the Clerk sign and certify a statement that this was not an original bond on Case No. 3:02-CV-0605-R; and

14. That, the Clerk did inform me pursuant to the local rules she could not certify and provide me with such a statement; and

Further affiant sayeth naught.

Dated: September 7, 2006

/s/ Cynthia Faye Setser
Cynthia Faye Setser